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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,618	10/01/2003	Andrew S. Neely	57793.US	7947
408	7590	11/22/2005		
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
DATE MAILED: 11/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/676,618	Applicant(s) NEELY ET AL.	
	Examiner Joseph F. Edell	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 5-8, 12-16 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-11, 17 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) .
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Amended claim 5 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 5 is directed toward non-elected Species II.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 15 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 22 recites that the poles are "hiking poles." However, the originally filed specification does not refer to hiking poles and does not articulate that the holder is dimensioned to grip the hiking poles. Are hiking poles

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equivalent to trekking poles? Are the dimensions of the holder specific to solve any stated problem?

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, "a closure mechanism" is recited in claim 1, line 9, and "a closure mechanism" is recited in dependent claim 11, line 4. It is unclear whether the limitation of claim 11 defines the same structural element of claim 1 or defines a separate structural element distinct from the closure mechanism recited in claim 1.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,821,762 to Foose.

Foose discloses a pole and structure apparatus that includes all the limitations recited in claims 1 and 22, as best understood. Foose shows a pole and structure apparatus having a plurality of poles 13,14 (Fig. 1), a holder 11 (Fig. 1) having an open

position (Fig. 5) and a closed position (Fig. 5), a closure mechanism 16,17 (Fig. 2) that is an over-the-center clamp, a release mechanism 18,19 (Fig. 2) associated with the holder and the closure mechanism, a supported structure (Fig. 1) disposed adjacent a top of a standing structure (Fig. 1) and being supported by each of the poles.

8. Claims 1 and 22, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,066,373 to Workman.

Workman discloses a pole and structure apparatus that includes all the limitations recited in claims 1 and 22, as best understood. Workman shows a pole and structure apparatus having a plurality of poles 6,7 (Fig. 1), a holder 1 (Fig. 1) having an open position (Fig. 2) and a closed position (Fig. 3), a hub (Fig. 3) with a plurality of movable hub components forming cylindrical sleeves to receive and grip the poles when in the closed position and release the poles when in the open position, a closure mechanism (Fig. 2) that is an over-the-center clamp, and a release mechanism (Fig. 2) associated with the holder and the closure mechanism.

9. Claims 1, 3, 4, and 17, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,975,626 to Aycock.

Aycock discloses a pole and structure apparatus that includes all the limitations recited in claims 1, 3, 4, and 17, as best understood. Aycock shows a pole and structure apparatus having a plurality of poles 71,72,73 (Fig. 5) forming a tripod structure, a holder 40 (Fig. 5) having an open position (Fig. 5) and a closed position (Fig. 7), a closure mechanism 42,43,44 (Fig. 5), a release mechanism 45,441 (Fig. 5)

associated with the holder and the closure mechanism, and a triangular seat (Fig. 7) with three corners and pockets to receive upper ends of the poles.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2 and 9-11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Aycock in view of Workman.

Aycock discloses a pole and structure apparatus that is basically the same as that recited in claims 2 and 9-11, as best understood, except that the holder lacks a plurality of movable hub components, as recited in the claims. See Figure 6 of Aycock for the teaching that the holder has a plurality of inclined cylindrical receivers 421. Workman shows a pole and structure apparatus similar to that of Aycock wherein the apparatus has a hub (Fig. 2) with a plurality of movable hub components forming cylindrical sleeves to receive and grip the poles when in the closed position and release the poles when in the open position, a core (Fig. 2) with a plurality of semi-cylindrical surface 41,42 (Fig. 2), a jaw 37,39 (Fig. 2) movable between the open position and the closed position, and a hinge 11 (Fig. 2) mounting the jaw to form cylindrical receivers. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Aycock such that the holder has a

hub with movable hub components to move between a closed position and an open position, a core with a plurality of semi-cylindrical inclined surfaces, a plurality of jaws with mating semi-cylindrical inclined surfaces, a plurality of hinges that each mount one jaw on the core to be movable between the closed position and the open position to form cylindrical receivers, such as the apparatus disclosed in Workman. One would have been motivated to make such a modification in view of the suggestion in Workman that the hub and core configuration allows for poles that may be removable through pivoting of the jaw to the open position.

Response to Arguments

12. Applicant's arguments filed 26 August 2005 have been fully considered but they are not persuasive. Remarks filed 26 August 2005 fail to address the 35 U.S.C. § 102(b) rejection of claims 1, 2, and 5 as being anticipated by Workman. Therefore, the rejection of claim 1 as being anticipated by Workman is maintained. Also, the Remarks filed 26 August 2005 state that claim 11 was amended to replace "a closure mechanism" to read "a holding mechanism". However, amended claim 1 continues to recite "a closure mechanism". See the above 35 U.S.C. § 112, second paragraph rejection of claim 11.

Next, Applicant argues that Foose fails to teach a pole and structure apparatus capable of performing the intended use recited in claim 1 that recites the holder being configured to orient the poles to form a structure and to position the legs. Foose teaches a structure made the poles, i.e. the side-by-side chair connected by the holder.

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The poles of Foose are oriented to be parallel by the holder. Also, claim 1 does not even recite that the holder must "position the legs". Claim 1 recites that the "legs being configured and positioned for engaging the ground and creating a standing structure", which taught by the apparatus of Foose. Therefore, Foose teaches the intended use of the apparatus disclosed in claim 1.

With respect to the amendment to claim 1, Applicant argues Foose fails to teach a single structure that is supported by each of the poles. However, the amendment to claim 1 does not recite a unitary structure supported by each of the poles, but merely a supported structure. Examiner reasonably interprets that the plurality of seats as a supported structure wherein the structure is supported by each of the poles.

In response to applicant's argument that the closure mechanism of Aycock does not grip the poles and penetrates the poles, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the closure mechanism of Aycock is *capable* of gripping the poles. See Figures 5 and 6 of Aycock which shows that the poles come in contact with the interior of the apertures 422, 432, 442. Therefore, the closure mechanism is *capable* of securing the holder in a closed position to grip and secure the poles. While the closure mechanism of Aycock incorporates bolts to fasten the poles, the closure mechanism is *capable* of securing the poles without penetrating the poles by simply removing the bolts.

In response to applicant's argument that there is no suggestion to combine the teachings of Aycock in view of Workman, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Workman teaches a holder for poles including a closure mechanism that allows for poles to be removed through pivoting of the jaw to the open position. Therefore, one of ordinary skill in the art would have been motivated to modify the apparatus of Aycock in view of Workman such that the poles may be removed. Also, Applicant argues that the modification to the apparatus of Aycock in view of Workman would destroy the intended purpose of Aycock. However, the apparatus of Aycock may be used as a table or seat with no minimum weight requirement recited. Therefore, the modification of Aycock in view of Workman would be able to function as a table or seat, even if it potentially would be able to support less weight.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



November 13, 2005


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